have been properly found, unless the court can see from the record that in drawing such inference the trier imposed some duty upon the parties which the law did not impose, or absolved them from some duty which the law required of them under the circumstances, or in some other respect violated some rule or principle of law."

*Liquidated Damages — Penalty.— Condon* v. *Kemper*, 27 Pacific Reporter 829. The much vexed question of liquidated damages and penalty has recently received an exhaustive treatment at the hands of the Supreme Court of Kansas in the above entitled case. Plaintiff and defendant entered into a written contract whereby Condon agreed to build a wall or else, at his election, to remove a certain house a short distance and put it in as good condition as it was before, and further stipulated as follows: "It is mutually agreed between said parties that a failure on the part of said Condon to perform these obligations shall entitle said Kemper to recover from him the sum of $500 as *liquidated* and *ascertained damages* for the breach of this contract." Condon failed either to build the wall or move the house, but the cost of moving it and putting it in as good condition as before would not have exceeded $100. The question before the court was the following: Are the words of the parties to govern and the $500 to be considered as *liquidated damages*, or must they look further into the actual nature of the transaction with the primal idea of compensation in view? After an elaborate citation of cases and text-books the court held that when the parties made the contract and stipulated for damages in case of breach, by use of the words *liquidated* and *ascertained damages*, fixing the amount at $500, they could not have had in contemplation *actual damages*, and hence the sum mentioned in the contract must be treated as a *penalty* and not as liquidated damages. Said Valentine, J., in the course of the opinion, "the tendency and preference of the law is to regard a stated sum as a *penalty*, instead of *liquidated damages*, because *actual damages* can then be recovered, and the recovery be limited to such damages." And quoting from 1 Sedgwick on Damages (8th Ed.) he says further, "whenever the damages were evidently the subject for calculation and adjustment between the parties, and a certain sum was agreed upon and intended as compensation, and is in fact reasonable in amount, it will be allowed by the court as *liquidated damages*." And again from the same work, "where the stipulated sum is wholly collateral to the object of the contract, being evidently inserted merely as security for performance, it will *not* be

allowed as liquidated damages." And finally to close up the whole discussion the learned judge cites *Myer* v. *Hart*, 40 Mich. 517, holding as follows, "Just compensation for the injury sustained is the principle at which the law aims, and the parties will not be permitted by express stipulation, to set this principle aside."

*Recitals in Municipal Bonds — Estoppel. — Post* v. *Pulaski Co.*, 47 Fed. Rep. 282. A county had issued bonds in payment of stock in a railroad. The charter granting the power to issue bonds and levy taxes for their payment further provided: "That no such subscription shall be made, no such bonds shall be issued, and no such taxes shall be levied unless a majority of the legal voters of said county shall vote for the same at an election to be held under order of the county court." No notice of the election was prescribed. The bonds recited on their face compliance with the law. But there was no evidence to show that notice had been given in all the voting precincts. The court held that reasonable notice was a legal incident of every election. The silence of the charter was no excuse. Upon the question of estoppel it said: "It may be conceded, as a doctrine now well established, that municipal officers are bound by recitals in their bonds as to all matters affecting the regularity of proceedings which they have passed upon, but it would certainly be a dangerous doctrine to maintain that they are estopped from denying their legal power or authority to make the same. These officials are the financial agents of the people, clothed with a limited power of executing or performing some trust or duty. If no power has been granted or voted them in any contingency to do acts or execute instruments creating or evidencing grievous indebtedness upon the city, town, or county, will their recitals on the face of the instrument, that they are executed in pursuance of law or sufficient authority, make binding obligations of such instruments as without the recitals would be utterly void? This cannot be the law. Such a rule affords no safety or security to the tax-payer. The plaintiff in this case may be regarded as a *bona fide* or innocent holder of the bonds or coupons, and may possibly suffer to the extent of the money he paid for the same. And yet it is far better he should do so than to recognize the doctrine that municipal officers without authority may, by placing on the face of their bonds untrue statements, thereby bind the people to pay them. The plaintiff should not have relied on the recitals in the instruments, but it was his duty to examine into the question of power on the part of